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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,386	08/24/2001	Haile Mehansho	8271	3459

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EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 05/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/939,386

Applicant(s)

MEHANSHO ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Josephson et al. (5,336,506).

Josephson et al. disclose a composition containing iron and arabinogalactan (AG) as in claims 1 and 3 from the Larch tree as in claim 2 and (Abstract). Claims 1-3 differ from the reference in the particular amount of AG. However, it would have been within the skill of the ordinary worker to use various amounts of AG for its known function of targeting a therapeutic agent to a specific population of cells in this case (col. 3, lines 20-35). Therefore, it would have been obvious to use particular amounts of ingredients in the claimed composition.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over McAnalley et al. (WO 98/06418).

McAnalley et al. disclose a composition containing AG and minerals (abstract and page 13, lines 24-40). Claims 1-3 differ from the reference in the particular amounts of AG. However, it would have been within the skill of the ordinary worker to vary the amount of AG according to the function of the composition. Therefore, it would have been obvious to use particular amounts of AG in a composition.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al. (6,004,610) in view of Gandhi (5,851,578).

Wang et al. disclose a beverage as in claim 1, and a dry beverage composition (claim 4), containing AG and guar gum in amounts from 0.01% to 10% from the Larch tree as in claims 1 and 2 (abstract and col. 2, lines 6-20, col. 4, lines 14—70 and col. 5, lines 1-40). Claims 1-4 differ from the reference in the addition of minerals. Gandhi discloses a composition, which contains calcium and other minerals, which can be a powder mix or a beverage containing guar gum and low viscosity edible gums (abstract and col. 10, lines 40-50). AG is considered such a gum, because the specification discloses that it provides an acceptable viscosity (page 2, lines 25-28). Therefore, it would have been obvious to use AG as the gum in Gandhi and the minerals of Gandhi in the composition of Wang because Wang et al. uses Ag and guar and Gandhi uses guar and can use a gum like AG in combination with minerals.

Claims 5 and 7 requires zero to particular amounts of minerals and claim 8 has lower levels of amounts. Gandhi has disclosed the use of various minerals. It would have been within the skill of the ordinary worker to use particular amounts of ingredients. Therefore, it would have been obvious to use minerals in the composition of Wang et al. as disclosed by Gandhi.

Gandhi discloses the use of water as in claim 6 in amounts of more than 50% (col. 8, lines 30-45). Therefore, it would have been obvious to use the claimed amount of water in the process of Wang.

Claim 9 requires a pH of from 2.5 to 7 and claim 10 requires at least 1% fruit juice, claim 11 requires zinc, and claim 12 particular zincs. Gandhi discloses a pH of from 2.5-4.5 (col. 12, lines 10-14), fruit juice in amounts of more than 1%, and zinc carbonate as in claim 11 (col. 7, lines 25-31 and lines 55-60, col. 12, lines 10-14). Gandhi uses zinc carbonate instead of the claimed zinc's. However, no patentable distinction is seen in the use of zinc carbonate instead one of the claimed zincs absent a showing of unexpected results. Therefore, it would have been obvious to use known pH's, fruit juice and zinc in the process of Wang et al. as disclosed by Gandhi.

Claim 13 further requires that the zinc is an amino acid chelate. However, applicants' specification discloses that zinc amino acid chelates are well known in the art as disclosed on pages 7 as are iron amino acid chelates as in claim 16. Therefore, it would have been obvious to use known chelates in the process of the combined references for their known functions.

Claim 14 requires the use of iron and claim 15 particular iron compounds. Gandhi discloses the use of iron, calcium, magnesium as in claims 14, 18 and 19, 20 and 23 (col. 12, lines 1-4). Certainly, calcium citrate malate is used as in claim 20 because of the reaction between water-soluble mineral salts and various acids such as malic acid (col. 10, lines 65-68 and col. 11, lines 1-5). Gandhi discloses various the claimed minerals that can be used in combination as in claims 18-23. Nothing new is seen in using ferric pyrophosphate as in claim 17 absent a showing of unobvious results, as iron in general is disclosed (col. 12, lines 1-4). Therefore, it would have been

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obvious to use the claimed minerals in particular forms as shown by Gandhi in the process of Wang et al. because Gandhi also makes a beverage using soluble fibers, as does Wang.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

Hp 5-14-03

  
**HELEN PRATT**  
**PRIMARY EXAMINER**